IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1050 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

==========

FIROZ ISMAIL GHANCHI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR LR PATHAN for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the judgment and order dated 14.06.2004 passed by the learned Joint District & Addl. Sessions Judge, Fast Track Court No. 6, Morbi in Sessions Case No. 10 of 2001 whereby, the appellant was convicted for the offences punishable u/s. 498(A) & 302 of the Indian Penal Code, 1860 [for short, “the I.P.C.”]. For conviction u/s. 498(A) of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for three years with fine of Rs.1000/- and in default of payment of fine, simple imprisonment for a further period of one month while, for conviction u/s. 302 of I.P.C., the appellant was sentenced to undergo imprisonment for life with fine of Rs.1000/- and in default of payment of fine, simple imprisonment for a further period of one month. Both the sentences were ordered to run concurrently.

2.0 The short facts of the prosecution case are as under ;

The appellant and the deceased were husband and wife and out of the said wed-lock, a girl child was also born. During

the marriage life of the deceased, which extended for a period of about five years, the appellant used to harass the deceased physically as well as mentally. On account of the said torture, once the deceased had also left her matrimonial home and had stayed at her parental home for a considerable long period of time. During her said stay at her parental home, the deceased had filed an application for maintenance before the Court of learned Judicial Magistrate, First Class, Maliya. However, subsequently, as the dispute was settled, the deceased returned to her matrimonial home.

2.1 In the night of 13.12.2000, on account of some quarrel, the appellant started harassing the deceased physically as well as mentally and also leveled allegations that she was having illicit relations. As the holy month of Ramzan was going on during the said period and the deceased was observing '*Roza*', the deceased woke up at around 5.00 am on the next day for observing 'shehari'. However, the appellant did not permit the deceased to observe the same and started harassing the deceased.

2.2 Thereafter, when the deceased was to go out for attending the natural call, at that time, the appellant restrained the deceased from going out and forced her to do the same in the '*mori* ' viz. a corner place in the room. When the deceased was doing the same, at that time, the appellant poured kerosene on her and, thereafter, set her ablaze. On hearing the shouts of the deceased, the mother-in-law of the deceased came to the place of incident and tried to rescue her. However, by that time, the deceased had suffered severe burn injuries on various parts of her body.

2.3 Later, the deceased was taken to the Government Hospital at Morbi. The history of the incident was recorded by the Medical Officer who was on duty at the relevant point of time. Since it was a medico-legal case, the said Doctor telephonically informed the police authority of City Police Station, Morbi about the said incident. One Mr. A. S. Mehta, who was discharging his duties as the P.S.O. of City Police Station, Morbi at the relevant point of time, noted down the same in the 'Janawajog' Register as Entry No. 228 of 2000 and, thereafter, in the Station Diary as well.

Thereafter, the P.S.O. gave a 'yadi' to A.S.I. - one Mr. B. A. Vaghela to enquire about the said incident. In pursuance of that the A.S.I. went to the Civil Hospital at Morbi and recorded the complaint of the deceased which was registered vide I – C.R. No. 392 of 2000 for offences punishable u/s. 498(A) & 307 of the IPC. .

2.4 Later, the deceased was shifted to the Civil Hospital at Rajkot. As the condition of the deceased was consistently deteriorating, a 'yaadi' was sent to the Executive Magistrate for recording the Dying Declaration of the deceased, through the police authority of Pradyumnagar Police Station. Thereafter, her Dying Declaration was recorded by the Executive Magistrate, Rajkot. The Investigating Officer carried out 'Panchnama' of the scene of offence in the presence of two 'Panchas' and also seized the 'muddamal' articles. Statements of several witnesses were recorded.

2.5 However, in the night of 17.12.2000, the deceased succumbed to the injuries. Inquest 'Panchnama' was prepared and the dead body was sent for post-mortem. In the meanwhile, the

appellant was arrested and sent to judicial custody. Thereafter, the Investigating Officer sent 'purshis' to the learned J.M.F.C. for the purpose of adding offence u/s. 302 of the IPC in the complaint. The 'muddamal' articles were sent to the F.S.L. for examination. On receipt of the Medical Certificate, PM Report and the F.S.L. Report, the same were kept in the investigation file.

2.6 At the end of investigation, the Investigating Officer filed charge-sheet before the Court of learned J.M.F.C., Morbi. However, as the charges were exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the same to the Sessions Court at Rajkot and it was numbered as Sessions Case No. 10 of 2001. Thereafter, the same was handed over to the learned Addl. Sessions Judge, Morbi for disposing of the same on merits. The learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charge, trial was conducted.

2.7 To prove the guilt against the appellant-accused the prosecution examined eleven witnesses. PW–1 Dr. Narendrasinh

Natubha Jhala at Exhibit – 5, PW – 2 Dr. Chandravadan Vanmadi Ajmera at Exhibit – 10, PW – 3 Dilipbhai Vishwanath Jani at Exhibit – 14, PW – 4 Becharbhai Ambabhai Vaghela at Exhibit – 19, PW – 5 Sangramsinh Jorubha Jadeja at Exhibit – 18, PW – 6 Indrasinh Bapalal at Exhibit – 22, PW – 7 Noor Mohammad Hajibhai at Exhibit – 23, PW – 8 Husainaben Mahammadbhai at Exhibit – 26, PW – 9 Rambhai Naranbhai Gadhvi at Exhibit – 28, PW – 10 Ashokkumar Shantilal Mehta at Exhibit – 29 and PW – 11 Bawanjibhai Danabhai Rabari at Exhibit – 36.

2.8 The prosecution has also relied upon several documentary evidences and, more particularly, the evidences in the form of three Dying Declarations viz. the history before the Doctor at Exhibit – 7, the Dying Declaration recorded by the Executive Magistrate, Rajkot at Exhibit – 16, the complaint at Exhibit – 20 and the deposition of the sister of the deceased as PW – 8 at Exhibit – 26 in order to prove the guilt against the appellant.

2.9 On submission of the closing 'purshis', the learned Addl. Sessions Judge recorded the further statement of the

appellant u/s. 313 of the Code of Criminal Procedure, 1973 and after hearing learned counsel for the respective parties, the learned Addl. Sessions Judge convicted the appellant and passed sentence as narrated in the earlier part of this judgment.

3.0 When the matter came up for admission hearing, it was informed by Mr. L. R. Pathan learned Advocate for the appellant that he was having all the copies of the Records & Proceedings. However, with a view to protect the interest of the appellant, we granted liberty to learned Advocate for the appellant to go through the Records & Proceedings. Ultimately, the matter was finally heard today.

4.0 Mr. L. R. Pathan learned Advocate for the appellant has submitted that the prosecution case rests entirely upon the four Dying Declarations of the deceased. He has submitted that there are material contradictions in all the Dying Declarations and, therefore, the trial Court ought not to have relied upon the same for recording the conviction of the appellant.

4.1 Learned Advocate for the appellant has contented that the trial Court has committed serious error on facts inasmuch as it has not considered the conduct of the appellant at the time of the alleged incident. He has submitted that when the appellant noticed the deceased burning, he tried to set-off the fire, on account of which he also suffered burn injuries on both the hands. Immediately, thereafter, the appellant and his mother took the deceased to the Civil Hospital at Morbi. Learned Advocate has submitted that the aforesaid conduct of the appellant clearly goes to show that the appellant had in fact tried to save the deceased who had attempted to commit suicide by setting herself on fire.

4.2 Learned Advocate has further submitted that except the three Dying Declarations, there is no other evidence on record to connect the appellant with the crime in question and when the same are not found to be reliable and trustworthy on close scrutiny, then the Court below ought to have acquitted the appellant from the alleged offence in question. He has, therefore, submitted that considering the entire evidence on record, this is a fit case wherein the appellant is required to be acquitted from the alleged offence in

question.

5.0 We have gone through the oral as well as documentary evidence shown to us by the learned Advocate for the appellant as also the impugned judgment and order passed by the Court below. From the record, it appears that the marriage life of the deceased at the time of the incident was about five years. It is a matter of record that in the past, on account of the continuous mental and physical torture meted out by the appellant, the deceased left her matrimonial home for her parental home. It appears that during her stay at her parental home, the deceased had filed an application for maintenance. However, subsequently, as the matter was resolved, the deceased returned to her matrimonial home and resided along with the appellant. But, it appears that thereafter also, the appellant continued to harass the deceased on regular basis.

6.0 The Court below has mainly relied upon the Dying Declarations of the deceased while recording the conviction of the appellant. On a plain reading of the Dying Declarations, it

transpires that in the night of 13.12.2000, the deceased was mentally as well as physically harassed by the appellant and was not permitted to sleep the entire night. Thereafter, at around 5.00 a.m. on the next day, when the deceased was to go out of the house for attending the natural call, the appellant restrained her from going out and insisted that she do the act in the corner of their bed-room. Accordingly, while the deceased was doing the said act in the corner of their bed-room, at that time, the appellant poured kerosene on her and, thereafter, set her ablaze. The aforesaid averments are common in all the four Dying Declarations.

7.0 It is a settled law that conviction can be based on Dying Declaration, without any corroboration, if it is made voluntarily, without tutoring or prompting. Normally, a person on the verge of death is not likely to implicate innocent person/s falsely but, at the same time, this statement is not made before the Court on oath and the maker is not subjected to cross-examination. Therefore, the Court is required to scrutinize it carefully and if it is found truthful, then in that case, it can be acted upon and can also be used for recording a conviction. Once the statement of the 'dying'

person and the evidence of the witness / witnesses testifying to the same are found to be reliable on careful scrutiny, it becomes very important and a reliable piece of evidence and if, ultimately, the Court is satisfied that the Dying Declaration is true and free from any embellishments, then such a Dying Declaration, by itself, could be sufficient for recording conviction, even without looking for any corroboration.

8.0 On a careful scrutiny of the Dying Declarations on record, it is clearly established that during the night of 13th / 14th December 2000, the appellant had harassed the deceased physically as well as mentally and that on the next day in the morning, while the deceased was to go out of the house for attending the natural call, the appellant restrained her from going out and, thereafter, compelled her to do the same in the corner of their bed-room. At that time, the appellant poured kerosene on her and set her ablaze. Thus, the role played by the appellant in the entire episode is very clear and raises no doubts in our minds. Accordingly, we have no hesitation in holding the Dying Declarations to be wholly trustworthy and free from all doubts.

9.0 The prosecution has examined the Doctor, who has given the initial treatment to the deceased as PW – 1 at Exhibit – 5. Before the said Doctor, the deceased has narrated the entire incident by way of history at Exhibit – 7. The same is also proved by way of the case papers of the deceased vide Exhibits – 6 to 9. The prosecution has examined the Executive Magistrate, who has recorded the Dying Declaration of the deceased at Rajkot Civil Hospital at Exhibit – 16, as PW – 3 at Exhibit – 14. The prosecution has also examined the Investigating Officer as PW – 11 at Exhibit – 36, through whom the prosecution has proved the complaint at Exhibit – 20.

9.1 We have carefully gone through the depositions of these witnesses and we find no reasons to believe it to be untrue or untrustworthy. The history given before the Doctor at Exhibit – 7 is duly supported by the averments made in the complaint at Exhibit – 20 and the Dying Declaration recorded by the Executive Magistrate, Rajkot at Exhibit – 16. The deceased has also narrated about the entire incident to her sister, which is evident from the

deposition of PW – 8 at Exhibit – 26. Nothing contrary has come on record in the cross-examinations of these witnesses which may lead us to believe their evidences to be untrue or untrustworthy. Thus, it could be said that on the material aspect of the role played by the appellant in the entire episode, all the Dying Declarations are consistent. In that view of the matter, we are unable to accept the say of learned Advocate for the appellant that there is inconsistency in the Dying Declarations. Once we come to the conclusion that the Dying Declarations are trustworthy and free from all doubts, then the same could be relied upon for recording conviction without any corroboration.

10.0 So far as the injuries sustained by the appellant are concerned, it is his say that he had sustained the said injuries, while he was trying to rescue the deceased from the burns. It is a matter of record that the incident in question took place in a room having area of about 11' X 10' and that there were many other articles which were kept in the said room. Considering the facts of the case and the 'Panchnama' of the scene of offence, it could be probable that after the appellant had set the deceased ablaze, the

other articles lying in the said room might have caught fire and since the room was reasonably small in area, the appellant might have sustained the said injuries. In her Dying Declaration, the deceased has categorically stated that on hearing the shouts of the deceased, the mother-in-law of the appellant had reached the spot and tried to rescue her. If we believe the say of the appellant, then in that case, in her Dying Declaration, the deceased would have definitely told about the positive role played by the appellant, as has been narrated with respect to her mother-in-law. But, in her Dying Declaration, the deceased had specifically narrated about the negative role played by the appellant.

10.1 It is a matter of record that in the past, the deceased had left her matrimonial home for her parental home and that during her stay at her parental home, the deceased had filed an application for maintenance. Thereafter, as the matter was resolved, the deceased returned to her matrimonial home. This shows that even prior to the incident in question, the appellant used to harass the deceased physically as well as mentally.

10.2 Keeping the aforesaid facts in mind and the conduct of the appellant that he had not permitted the deceased to go out of the house even for her natural call, we find no merits in the said say of the appellant and declare it to be devoid of any merits.

11.0 So far as the aspect of homicidal death is concerned, the same is proved from the evidence of the Doctor who has performed the Post-mortem of the deceased and the Inquest 'Panchnama'. It may be noted that the aspect of homicidal death was not disputed by the other side even before the Court below and, therefore, we are not discussing the same in detail in this Appeal.

12.0 Considering the facts and circumstances of the case and the evidence available on record, we have no hesitation in holding that the appellant had committed the heinous crime of murder. We are in complete agreement with the reasonings given by and the findings arrived at by the trial Court and, therefore, find no reason to interfere with the same.

13.0 In the result, the appeal is dismissed.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

pravin/*